

Juanita Broennimann
Provence, Tiffany N v. United States of America, et al

June 16, 2022

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1 VIRGINIA:

2 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
3 SOUTH CAROLINA OF CHARLESTON DIVISION

4 IN ADMIRALTY

5 *****

6 TIFFANY N. PROVENCE, as the)
Personal Representative of)
7 the Estate of Juan Antonio)
Villalobos Hernandez,) Case No.
8) 2:21-cv-965-RMG
Plaintiff,)

9 -vs-)

10 UNITED STATES OF AMERICA,)
11 CROWLEY MARITIME CORPORATION,)
CROWLEY GOVERNMENT SERVICES,)
12 INC.,)
DETYENS SHIPYARDS, INC., and)
13 HIGHTRACK STAFFING, INC.)
d/b/a)
14 HITRAK STAFFING, INC.)
Defendant.)

15 *****

16 DEPOSITION OF

17 THE UNITED STATES

18 BY AND THROUGH ITS CORPORATE DESIGNEE,

19 JUANITA BROENNIMANN

20 9:00 a.m. to 2:00 p.m.

21 June 16, 2022

22 Via ZOOM

23
24 Job No. 38889

25 REPORTED BY: Dawn Testa

1 Military Sea Lift Command is -- well, what role does the
2 Military Sea Lift Command play in selecting shipyards
3 where its vessels will be repaired; any role, or is that
4 completely left to the operator?

5 A So, I will answer this, based on the
6 assumption that it is a Government-owned,
7 contracted-operated shipped.

8 We have different methodologies. And the
9 different methodologies would apply, depending on how we
10 manage the ships.

11 The Lummus was a Government-owned
12 contract-operated vessel. So I will reply in that
13 context.

14 Q Sure.

15 A So the operating company puts together the
16 specifications, the work items that the package of what
17 needs to be done. It is reviewed by some of our
18 engineering staff at Military Sea Lift Command. We
19 provide consent for the operating company to go and put
20 it on the list, solicit it. That package, the bids come
21 into the operating company. They review it. They do
22 the price analysis, and they provide a recommendation to
23 Military Sea Lift Command. And then we would consent to
24 the contract.

25 Q Okay. But do I understand correctly that the

1 to the lifeboat systems on the Lummus, those
2 specifications would have been completely and
3 exclusively prepared by Crowley, but would have been
4 expressly approved by the Military Sea Life Command; is
5 that correct?

6 A When you say "expressly approved," I'm not
7 sure if -- the primary focus of the review is to ensure
8 that we are covering all of the items that we
9 collectively, Crowley, and MSC, know need to be
10 addressed.

11 Q Okay. But I think I understood your
12 testimony to be that Crowley would not be permitted to
13 send the specifications out for bid until such time as
14 the Government had expressly approved the specifications
15 by whatever process they have; is that true?

16 A Yes, that is true.

17 Q So by extension, if there's a specification
18 for the repairs to the lifeboat davit arms, or lifeboat
19 systems, that would have been prepared by Crowley and
20 approved by the Government before this could have gone
21 out for bid; is that correct?

22 A Yes.

23 Q And, from the Government's perspective, is it
24 true that, at all times after this contract is executed
25 in July of 2014, Crowley is acting as an agent on behalf

1 comply with all of the applicable OSHA regulations
2 during Crowley's operation, maintenance and repair of
3 the Lummus?

4 A I don't believe that OSHA applies to the ship
5 itself.

6 I believe that Coast Guard requirements,
7 SOLAS, which is Safety of Life At Sea, are applicable.

8 I do not believe OSHA is specifically
9 applicable. It is applicable when they're in the
10 shipyard, for the shipyard.

11 Q Yes. So I tried to phrase my question
12 meaning: The applicable OSHA regulations. And I think
13 you are distinguishing, which I understand.

14 I'm talking about when the ship is in the
15 shipyard, like this ship was between November of 2018
16 and June of 2019, is it your understanding that OSHA had
17 shipyard regulations, first of all?

18 A Shipyard regulations. I'm not an expert on
19 OSHA, but I know they have some oversight of shipyard
20 safety.

21 Q Yeah. I know you're not an expert on OSHA,
22 but you're an expert in this field -- you've been
23 working on for a long time -- presumably, you've come
24 across OSHA a good bit; is that accurate?

25 A A fair amount, yes. I have come across OSHA.

1 I know it applies to the shipyard.

2 Q There we go.

3 When someone dies, is it your experience that
4 OSHA becomes involved in an investigation of that depth?

5 A Yes.

6 Q During your career with the Military Sea Lift
7 Command, other than this particular case, have you had
8 the unfortunate circumstance of dealing with other
9 deaths in shipyards?

10 A That was why I paused when I answered it. I
11 am not certain I think answer that one way or the other.
12 I do not believe so, other than a death from, say a
13 heart attack or something like that, but not an
14 industrial accident.

15 Q All right. Be that as it may, my question
16 really is -- I'll limit it down in light of the fine
17 points you made in your testimony.

18 When the ship is in the shipyard, being
19 repaired by Crowley, would you expect them to comply
20 with any applicable OSHA regulations?

21 MR. GILSENAN: Objection to "yard."

22 A Crowley is not repairing the ship; the
23 shipyard is contracting to repair the ship.

24 Q All right. Ms. Broennimann, let me try to
25 make this clear: Crowley has responsibility for the

1 operation, maintenance and repair of the Lummus; is that
2 correct, under the contract with the Military Sea Lift
3 Command?

4 A Yes.

5 Q So when I say "repairs," I'm talking about,
6 Crowley is in charge of the repairs for the Lummus; is
7 that accurate?

8 A Crowley is expected to manage the contract
9 that they enter into with the shipyard, but, by in
10 large, the repairs are being done by the shipyard.

11 Q Yeah. I don't mean swinging a hammer and
12 climbing a ladder. And I think that's, maybe, where
13 we're getting hung up. Clearly, the shipyard is doing
14 all that kind of work, or people like my client are
15 doing that kind of work, right?

16 A Correct.

17 Q But the Government has paid a great deal of
18 money to Crowley to be responsible for the safe,
19 efficient and proper repair of the Lummus; is that
20 correct?

21 MR. GILSENAN: Objection.

22 A Yes, in a general way. I mean, to me,
23 specifics matter. I'm an engineer. Words matter.

24 Q Yes, ma'am. And I'm trying to use the same
25 words you used earlier in your testimony.

1 Q Okay. And, about how many shipyards on the
2 east and gulf coast contained the Bobo class vessels?

3 A That are in operation right now?

4 Q Yes.

5 A Five.

6 Q So, how important do you consider Detyens as
7 a resource for repair of these vessels?

8 A It's an important resource. Overall, there
9 is not enough commercial ship repair to support both
10 commercial industry, the maritime administration and
11 Military Sea Lift Command. We're always struggling with
12 what ship is going to be able to get into a yard in
13 order to meet their regulatory requirements for dry
14 docking. And Detyens is one of the few shipyards that
15 can take more than one ship at a time.

16 Q So is it fair to say that MSC uses Detyens a
17 lot?

18 A Yes.

19 Q And have you ever seen life boat davit arms
20 rigged in this manner before?

21 A Yes. That's how I have customarily seen them
22 rigged.

23 I can't say how it's been on every ship that
24 I have seen davit work done on, but if I were to see it,
25 I wouldn't take any particular notice of it, because

1 this is what I have always seen.

2 Q This is the single-wire rope restraint
3 method?

4 A Yes.

5 Q And regarding your see something say
6 something standard, when you have been in yards where
7 they would restrain the davit arm in this manner, did
8 you call for a work stoppage and stand down to have it
9 done a different way?

10 A No. I am not a rigging expert. I would
11 defer to the yards expert. They do it every day.

12 The only time I would call for a stand down
13 on rigging is if I saw something with the rigging gear
14 itself, that it appeared to be failing; say, a strap
15 that was wearing through or a wire that was slipping,
16 obviously, or corroded, something like that.

17 Q So, in your experience of seeing davit arms
18 rigged this way, you have never objected to that manner
19 of rigging?

20 A No.

21 Q Do you know Dallas Verble?

22 A I do.

23 Q And how do you know Dallas?

24 A He's been the Detyens project manager for
25 several ships that I have had at Detyens.

1 Q Well, I'll represent to you that that
2 Mr. Verble testified that Detyens has always rigged
3 gravity davit arms in this same manner, with the single
4 wire. And that's how they've always done it, therefore,
5 they did not perceive a danger.

6 You've been asked a lot of questions
7 regarding QDRs and reports from Captain Oxendine and so
8 forth, regarding supervision by Detyens of various jobs
9 going on, on the shipyard and certain personnel in those
10 reports as you testified about the supervision by
11 Detyens for a particular task might have been
12 inadequate.

13 Do you have any reason to believe that, had
14 Detyens had constant supervision of the davit work, that
15 they would have rigged the davits any differently?

16 A Based on the fact that they be have been
17 doing it that way for thirty years, I would presume that
18 when they first started doing it, they had supervision.
19 And it became a common practice.

20 No, they would not have changed the way that
21 they rigged it, whether there was supervision or not.
22 That was the standard in that yard.

23 Q So is it fair to separate supervision issues
24 with certain other jobs from the way in which these arms
25 were rigged?

1 A I can easily do so, yes.

2 Q What is Admiral Mewbourne's background in the
3 Navy?

4 A Admiral Mewbourne is an aviator. So he flies
5 airplanes, or flew airplanes, I should say.

6 He was also the commanding of several nuclear
7 carriers prior to coming to MSC.

8 AND then he was at MSC, then Transcom. I'm
9 sure I have missed some things, put that's the general
10 picture of his career as I understand it.

11 Q In contrast, is it fair to say that your
12 career has been with the maintenance and lifecycle and
13 management of MSC ships?

14 A Yes.

15 Q Okay. Would you consider Admiral Mewbourne
16 to be a shipyard specialist?

17 A I would not think so, no.

18 Q What about Captain Oxendine? Was he an
19 engineer?

20 A I can't say one way or the other, but I don't
21 believe he was.

22 Q Do you consider him to be a shipyard
23 specialist?

24 A No.

25 Q Is it fair to say that the MSC port engineers

1 are shipyard specialists?

2 A They are certainly much, much more
3 experienced with what is considered common practice and
4 shipyard policies. So, yes, some more than others,
5 because of level of experience, but yes.

6 Q Would that go for the port engineers who work
7 to the contract operators, such as Crowley, as well?

8 A Yes.

9 Q Do you have any criticism of Crowley
10 Government Services or Crowley Maritime as a result of
11 this incident?

12 A No. The opinion of those of us who work the
13 contract was that the failure was not caused by Crowley,
14 not contributed to by Crowley. It was a standard
15 practice. And there was an unusual errant electrical
16 current, from what I understand. And, you know, there
17 was no adverse reporting. There was no, essentially, a
18 QDR for Crowley associated with this.

19 It was believed to have been the primary
20 responsibility of the shipyard.

21 Q Okay. So Crowley did not receive a reprimand
22 of any kind from MSC?

23 A No.

24 Q Did you have any problem, or did the United
25 States have any problem with Crowley's management of the

1 repair availability of the Lummus?

2 A Not that I recall, no.

3 Q Did you then, as a result of this incident
4 with the United States, hesitate to aware a contract to
5 Crowley again?

6 A No, I would not hesitate.

7 Q The manner in which the davit arms were
8 rigged, did you consider that to be life threatening?

9 A It was standard practice. I would have
10 considered it to be safe.

11 Q Okay. So you wouldn't have expected the
12 Crowley port engineer to speak up about the manner in
13 which it was rigged?

14 A No, I would not. It would take a rigging
15 expert of which, I mean, the most experienced with
16 rigging was the rigging team from Detyens.

17 And they had determined that it was safe and
18 used it for years. So there's no reason to think that
19 it was not safe.

20 Q Does the MSC contract with Crowley for the
21 operation of the Lummus, require Crowley to supply a
22 rigging expert to the shipyard?

23 A No, specifically, it assigns rigging
24 responsibilities to the shipyard, because they are the
25 subject matter experts.

1 Q Okay. You were testifying earlier about the
2 GTR, the general technical requirements, which are also
3 incorporated into the repair spec, correct?

4 A Correct.

5 Q And what is the purpose of the GTR for
6 Crowley?

7 A Primarily, it's provided so that -- to guide
8 them in the preparation of the specification, itself.

9 From a contractual standpoint, if all of the
10 Government's contracts or all of our operating
11 contractors contracts are overall structured similar.
12 Then it puts us in a better position with a shipyard if
13 they said: Oh, well this isn't what I thought, because
14 of this other contract.

15 So the more they're standardized, the better,
16 from a contracting standpoint, it is for the Government.

17 Q Okay. Let's focus on shipyard guidance.

18 Under the GTR, what is the Government's
19 policy on who determines how do to the work?

20 A Under the GTR, it's guidance level work
21 items, which means the Government or Crowley would tell
22 the shipyard, via the spec, what it is we're trying to
23 accomplish; but how to do it is left up to the shipyard.

24 Q So you don't expect Crowley to tell the
25 shipyard how to do the work?

1 A No.

2 Q Or how to perform rigging?

3 A No.

4 Q Okay. You were asked a bit about OSHA
5 earlier, OSHA regulations regarding shipyard work.

6 In your experience with MSC as a vessel owner
7 and operator, do the OSHA regulations apply to the
8 shipyard or to the vessel operator?

9 A To the shipyard.

10 Q Do you have any reason to believe they apply
11 to the operator?

12 A Not that I'm aware of, no.

13 Q Why do you suppose the customers of Detyens
14 paid Detyens to have their own safety department?

15 A As a customer of Detyens, I would say that I
16 pay them to have their own safety department, because
17 they know their personnel, they know the conditions in
18 the shipyard, they know the resources available to them.
19 And, also, the people are employed by them. So they
20 have the right, if you will, to give directions to the
21 employees on how to implement safe practices.

22 Q Okay. And does the United States expect its
23 contract operators to supercede the safety department of
24 the shipyard?

25 A No. The shipyard is responsible for the

1 overall care of the ship. And, to me, that's including
2 the people that are working on it; and, therefore, their
3 safety standards or guidance would have precedence.

4 Q Does the United States expect the contract
5 operator, such as Crowley, to duplicate these safety
6 departments of the shipyard?

7 A No.

8 Q In your thirty-one years of experience with
9 the industry, do you believe that, other than the United
10 States or Crowley, did anything wrong to contribute to
11 this accident and if so, what?

12 A I don't believe that we contributed to the
13 accident.

14 Q Okay. Are you aware in your career of --
15 during ship repair availabilities, has there ever been
16 an instance where a contract operator's SMS superceded
17 the shipyard's?

18 A Not that I know of, no.

19 Q And, regarding the contract, the repair
20 specification, in some specifications it might include
21 the shipyard takes full responsibility for the ship upon
22 delivery and retains full responsibility of the ship
23 until redelivery to the Government. And some repair
24 specifications might not contain that exact language.

25 Whether that language is in the repair

1 specifications or not, what is the industry standard?

2 A The industry standard is that, once they have
3 taken custody, if you will, of the ship, they are
4 responsible for the ship until they turn it back over.

5 Q To the shipyard?

6 A Yes, the shipyard.

7 Q And what is an indicator of taking custody?

8 A The two indicators that are commonly used for
9 taking custody of the ship is crossing the sill of the
10 dry docking, if the ship is going directly into dry
11 docking or being tied up alongside the pier if they're
12 not going directly to dry dock.

13 Q So in the industry standard, whether it's in
14 the contract language or not, the standard under which
15 you have operated for your three decades, has been the
16 yard has responsibility when they take custody of the
17 ship?

18 A Yes.

19 Q There was some testimony earlier from a
20 shipyard trip report from Captain Oxendine, where
21 Detyen's health and safety officer, Mike Marshall,
22 testified that he was unaware of the davit work.

23 What I want to ask you is: If Detyens had
24 been rigging davit arms in this same fashion since, for
25 twenty-five plus years, and these arms have been rigged

1 in this fashion for five months before the failure
2 occurred, do you have believe that if Marshall had been
3 aware of how the davit arms were rigged, it would have
4 changed anything?

5 A No. They would have rigged them the same
6 way. They have been doing that for years.

7 Q Let me just take a moment to look at my notes
8 Okay.

9 I have nothing further. Does anyone else
10 have anything?

11 MR. Young: I do. Yes.

12 BY MR. YOUNG:

13 Q Miss Broennimann, I was listening to your
14 testimony here. It's my understanding that your belief
15 is that this davit arm was completely safe in the manner
16 it was rigged; is that correct?

17 A I believe that the shipyard rigged it in the
18 way they had determined was a safe manner.

19 Q Okay. I think also I heard your testimony to
20 be that you have actually personally experienced or
21 observed that manner of rigging on other ships, or did I
22 misunderstand that?

23 A Yes, you did. On other ships, or even on
24 Lummus' previous availabilities.

25 Q When it comes to Lummus, was it other

1 the responsibility of the shipyard.

2 Q Okay. And could the shipyard, if they wanted
3 the manual, could they have asked for it?

4 A Yes.

5 Q Is it fair to say a vessel of this size and
6 complexity has many hundreds of technical manuals for
7 all the different machinery on board?

8 A Yes.

9 Q And if you're going in on a five-year dry
10 docking, where you're getting dozens of systems worked
11 on, hundred of pieces of equipment, would you expect --
12 would it be normal to turn over hundreds of technical
13 manuals to the shipyard when the ship is delivered?

14 A No. They're available on board the ship,
15 should the shipyard decide that they need to refer to
16 them.

17 Q And, in your experience, if the shipyard
18 doesn't ask for the manual, you leave it on the shelf?

19 A Correct.

20 Q And I want to ask you, did the repair -- item
21 601 for the lifeboat davits, require a complete overhaul
22 of the davits, blasting, clad welding and painting,
23 would you expect that that would require removal and
24 blasting and refurbishment of the stopper bars, as well,
25 that are normally fixed to the davit arms.

1 the track, it would still be right where it was, resting
2 against the bar, in my example, correct?

3 A Correct.

4 Q All right. Extending those hypothetical
5 facts to this case, if the davit arm in this case had
6 been restrained in the manner I just described and the
7 wire rope failed, would you agree with me that the davit
8 arm would not have traveled down the track and killed
9 Mr. Hernandez?

10 MR. GILSENAN: Objection.

11 A Provided the stopper bar was strong enough,
12 correct.

13 MR. YOUNG: Thank you. I don't have any
14 further questions.

15 BY MR. GILSENAN:

16 Q What happens if you get an errant electrical
17 current that parts the wire by melting it, while the
18 welded flat bar has been removed to blast and coat that
19 area?

20 A The davit arm is going to come down.

21 Q And is there any way to predict if or when an
22 errant electrical current will happen?

23 A No. That's the entire meaning of errant.
24 It's unintended. And the electricity can't be seen, so
25 it's not obvious to a safety observer.